In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1080

CLIFFORD LANCASTER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 74-1083

EUGENE SCHAEFER, PETITIONER

v.

UNITED STATES OF AMERICA

No. 74-1114

ANGELO DEL PIETRO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the evidence failed to show that they operated an illegal gambling business involving five or more persons. Petitioner Schaefer also contends that the government should have included an F.B.I. summary in a stipulation of facts entered into by the parties.

After a non-jury trial in the United States District Court for the Eastern District of Missouri, petitioners were convicted of engaging in an illegal gambling business, in violation of 18 U.S.C. 1955.[1] Petitioner Lancaster was sentenced to three years' imprisonment and a fine of $10,000; Lonsberry to two years' imprisonment and a $10,000 fine; Del Pietro to eighteen months' imprisonment and a $5,000 fine; and Christophel, Schaefer, and Vogt each to nine months' imprisonment and a $5,000 fine. The court of appeals affirmed, one judge dissenting (Lancaster Pet. App. A-1 to A-20; 510 F.2d 1307).[2]

The government's case consisted of two stipulations, evidence derived from a court-authorized wire interception, gambling records seized from the premises of several of the defendants, and the expert opinion of an F.B.I. agent. Based on this evidence, the district court found that petitioners conducted a bookmaking business in violation of 18 U.S.C. 1955 (A. 298-299).[3]

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[1]Petitioners were also convicted of conspiracy to violate 18 U.S.C. 1955. However, the court of appeals reversed the conspiracy convictions, holding that there was no element in the conspiracy that was not present in the completed crime and that, therefore, the prohibition against double jeopardy barred the conspiracy charge (Lancaster Pet. App. A-9 to A-10). But see *Iannelli* v. *United States*, No. 73-64, decided March 25, 1975, slip op. 14-15, n. 17.

[2]The court of appeals also affirmed the substantive conviction of co-defendant Frank Vinceri, who has not filed a petition for a writ of certiorari; co-defendant Ellis Athanas was also convicted, but died prior to sentencing.

[3]"A." refers to the appendix filed in the court of appeals, a copy of which we are lodging with the Clerk.

According to the stipulations, petitioners, who all admitted that they were bookmakers,[4] operated their gambling business in the following manner: Petitioner Del Pietro and co-defendant Vinceri disseminated line information[5] to petitioner Lancaster, who then passed the line on to petitioners Christophel, Schaefer, and Vogt. Lancaster exchanged additional line information and discussed line formulation with each of the other defendants and all of the defendants disseminated the line to their individual customers. Petitioner Lonsberry operated a sub-book, relaying to Lancaster the bets he accepted from customers. Lancaster placed layoff bets with and accepted layoff bets from Del Pietro, Schaefer, and Vogt and discussed layoff betting with Christophel (A. 230-233, 236-239, 361-364).

1. Petitioners contend that the government failed to prove an offense because there was no showing of an illegal gambling business involving five or more persons, as required by 18 U.S.C. 1955(b)(1)(ii). They argue that their individual bookmaking operations did not, despite their regular exchange of line information and layoff bets, constitute a single business within the purview of Section 1955. This contention ignores the nature of a bookmaking business, which ordinarily requires both the sharing of line information and the exchanging of layoff bets on a regular basis.

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[4]Although Schaefer refused to characterize himself as a bookmaker, he did stipulate that over a period of time exceeding one month he accepted bets from about 30 customers (A. 236-237).

[5]Line information refers to point spreads used in gambling (Lancaster Pet. App. A-6, n. 6).

The type of gambling operation involved here was analyzed by the court of appeals in *United States* v. *Thomas*, 508 F.2d 1200, 1202, n. 2 (C.A. 8), certiorari denied *sub nom. Schullo* v. *United States*, No. 74-953, April 28, 1975. A bookmaker makes his profit by taking a commission on the bets placed with him. When his books are balanced, he has an equal amount of money bet on each side of a contest and uses the money paid in by the losing customers to pay off the winning customers. When his books are not balanced, the bookmaker stands either to make an additional profit or to suffer a loss, depending on the direction in which his books are unbalanced.

In order to minimize the risk of loss, a bookmaker will attempt to balance his books, even though this means that he forgoes the opportunity to make an additional profit. At the outset, the bookmaker attempts to stimulate equal betting on both sides of a contest by giving customers odds or a line on a particular item. If, in spite of the line, the betting is unbalanced (as normally occurs), the bookmaker will attempt to exchange his excess bets with those of one or more of the bookmakers, thus, ideally, balancing the books of each cooperating bookmaker.

After a particular contest is over, the bookmakers whose books had been unbalanced on the side of the losing team (before the exchange of layoff bets) collect the money due from the losing bettors and transfer this money, as payment on the layoff bets, to the bookmakers whose books had been unbalanced on the side of the winning team and who otherwise would have suffered a loss. Thus, layoff betting is a sophisticated method of distributing potential excess profits to those members of the business with potential losses so that each member of the business can stay in the business and continue to earn his commissions.

The evidence in this case established that petitioners systematically (1) shared a resource necessary for the profitable operation of their gambling business (line information) and (2) effectively apportioned excess profits among themselves (layoff betting). As the court of appeals stated, "[t]he interdependence of the various individual components, including the sharing of line information and the exchanging of profits through layoff betting, outweighs the 'independent businessmen' theory urged by appellants and satisfies us that there was one 'illegal gambling business' here for the purposes of 18 U.S.C. 1955" (Lancaster Pet. App. A-8). See *United States* v. *Thomas, supra,* 508 F.2d at 1204-1206; *United States* v. *Bohn,* 508 F.2d 1145, 1149 (C.A. 8), certiorari denied, No. 74-951, April 28, 1975; *United States* v. *DeCesaro,* 502 F.2d 604, 611 (C.A. 7); *United States* v. *McHale,* 495 F.2d 15, 18 (C.A. 7); *United States* v. *Sacco,* 491 F.2d 995, 1013 (C.A. 9) (*en banc*); *United States* v. *Ceraso,* 467 F.2d 653, 656 (C.A. 3).[6]

2. Petitioner Schaefer contends (Pet. 7-8) that he was denied a fair trial because the government did not include in the stipulation an F.B.I. report that indicated that Schaefer had not made any layoff bets with Lancaster on four particular days. This contention is without merit since petitioner was admittedly aware of the report prior to trial (Pet. 8).

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[6]There is no conflict among the circuits on this question. Petitioners' concern (Lancaster Pet. 9) that a conflict may develop within the Eighth Circuit is premature. If a conflict should arise in that circuit, it is a matter for resolution by the court *en banc*, and not by this Court. *Wisniewski* v. *United States*, 353 U.S 901. In any event, Judge Heaney, upon whose dissent in *Thomas* petitioners rely, wrote the opinion for the court in *Bohn* following the decision in the instant case on this issue.

In any event, inclusion of the report in the stipulation would not have changed the result. The trial court knew about the report, Schaefer having discussed it in his written closing argument and memorandum of law (A. 257, 269). The report summarized gambling conversations intercepted over Lancaster's telephone on four particular days and stated that Lancaster exchanged layoff bets with certain named persons on those days, Schaefer not being among them.

Although petitioner correctly states (Schaefer Pet. 8) that the report indicates that he did not make layoff bets to Lancaster on those four days, he errs in implying that the report showed that he never placed layoff bets with Lancaster. The report only analyzed communications intercepted on four particular days, and did not deal with the other ten days of the wire interception. Under these circumstances, there was no need for the government *sua sponte* to provide this report to the trial court.

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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